FISA SUBMISSION-READY MASTER COMMENTS
Regulation of Trusts Bill, 2026

A. Proposed overarching FISA position
B.

FISA supports modernisation of trust regulation, stronger governance, beneficiary protection and effective AML/CFT transparency. The final framework should, however, be legally certain, proportionate to risk, administratively workable and digitally implementable. It should preserve legitimate private-law autonomy, avoid making substantive legal consequences dependent indefinitely on administrative processing, distinguish serious misconduct from remediable technical non-compliance, and preserve effective judicial oversight.

B. Core implementation principle

No recurring filing duty, acknowledgement-dependent legal consequence or sanction regime should commence until the regulations, forms, digital systems, service standards, staffing and escalation mechanisms necessary for compliance are demonstrably operational. Official system failure or administrative delay should not create trustee default, invalidate otherwise lawful acts or prolong fiduciary office.

C. Constitutional framing

FISA does not contend that freedom of contract is an absolute standalone constitutional right. The concern is that statutory interference with otherwise lawful trust arrangements must be rational, proportionate and procedurally fair when considered with constitutional values of freedom, dignity and autonomy and the specific protections of privacy, property, occupational freedom, just administrative action and access to courts.

D. Section-by-Section consolidated comments

Clause / Issue	FISA Comment	Proposed Amendment / Wording	Rationale
General / systemic	The Bill creates continuous regulatory dependence on the Master without corresponding statutory service standards.	Link commencement and legal consequences to operational readiness; require digital filing, immediate receipts, service standards, escalation and deemed outcomes.	Administrative delay should not become substantive legal risk. The cumulative workload includes amendments, authorisations, annual returns, BO registers, investigations, resignations, terminations, compliance notices, fines and appeals.
Clause 1 – beneficiary / beneficial owner	The definitions blur fiduciary control, vested entitlement and membership of a discretionary or open beneficiary class. “Identifiable” can be overbroad.	Permit class-level reporting for open discretionary classes until a person is named, reasonably identifiable, vested, selected to benefit or actually benefits. Align prescribed fields with FICA/SARS/Master terminology.	Open classes may include unborn, unknown or uncontactable persons. Overbroad individual reporting creates impractical duties and privacy risk without necessarily improving AML/CFT outcomes.
Clause 1 – founder / donor / terminology	The interaction between founder, donor and settlor should be precise and consistent with South African trust-law concepts and the Bill’s creation requirements.	Clarify that a person is treated as founder only where the statutory creation elements are met; avoid terminology that unintentionally attributes founder status to later contributors.	Later donations should not automatically alter the identity or legal role of the founder.
Clause 2 – related persons	The two-degree test may be too rigid for all regulatory purposes and requires clarity for juristic trustees and complex	Clarify the purpose-specific application of the definition and how it applies where a trustee/founder is a juristic person.	A single relationship definition should not create unintended consequences in independence and

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	family structures.		governance provisions.
Clause 3 – protective trusts	The provision may unnecessarily narrow judicial choice for minors and vulnerable persons and may not align with existing protective regimes.	Preserve judicial discretion and expressly coordinate the provision with the Administration of Estates Act, Mental Health Care Act and existing court-directed protective trust practice.	The objective should be protection of the vulnerable person, not exclusion of an otherwise appropriate mechanism.
Clause 3(2) – community property	The blanket exclusion of trusts administering property received by a community from the State may be wider than necessary.	Clarify the policy rationale and identify the alternative statutory vehicle; limit the exclusion to cases governed by a specific, adequate legislative regime.	A broad exclusion can create uncertainty for existing or future community structures.
Clause 4(4) – invalidity	A trust validly created could later be declared invalid because a creation requirement subsequently ceases to be satisfied.	Distinguish invalidity at inception from later non-compliance. Give the court discretion to order rectification, prospective invalidity or other just relief and protect accrued third-party rights.	Mandatory invalidity may prejudice beneficiaries, creditors, SARS and bona fide third parties and create retrospective uncertainty.
Clause 5 – Master jurisdiction	The “greater or greatest portion of trust property” test is unstable for shares, incorporeal rights, portfolios and offshore assets.	Use principal place of administration in the Republic as primary connecting factor, with asset location as fallback. Preserve authority and acts until formal transfer.	A stable connecting factor reduces competing jurisdiction and cancellation of otherwise valid authority.
Clause 6(2) / 8(1) – authority	Clause 6(2) can be read as permitting control after lodgement although clause 8 requires written authority.	Amend clause 6(2) expressly to state that no person may act as trustee until authorised in writing under clause 8.	The Bill should contain one unambiguous trigger for authority.
Clause 6(3)–(6) – amendments	Amended powers cannot be exercised until Master acknowledgement; premature acts are invalid and may attract personal/criminal liability. The draft also duplicates subsection number (4).	Provide that a valid amendment takes effect under the deed and applicable law; require lodgement within a prescribed period. At minimum, electronic lodgement should generate immediate receipt and be deemed acknowledged after 10 business days unless a deficiency notice is issued. Delete automatic invalidity for official delay.	This is a major contractual-autonomy and administrative-capacity issue. Master delay can paralyse transactions and manufacture liability outside trustees’ control.
Clause 7 – contact details	14 days and the one-month commencement catch-up are too short for many existing/institutional trusts and do not accommodate delayed knowledge or system failure.	Use 20 business days from actual or constructive knowledge for material changes; provide a longer phased commencement period and bulk electronic filing.	Minor administrative changes should not trigger disproportionate enforcement.
Clause 8 – security	The security power is broad and may impose disproportionate costs on low-value, illiquid or low-risk trusts.	Prescribe transparent risk-based criteria, including asset value, liquidity, nature of assets, trustee profile and cost relative to trust resources; require reasons and review.	Security should protect beneficiaries without making trusteeship uneconomic.
Clause 8(6) – juristic trustees	Authority in the name of a natural-person representative may interrupt a juristic trustee’s continuing office whenever personnel change.	Issue authority to the juristic person and record authorised representatives separately. Representative substitution should be notification-based and should not suspend the juristic person’s office.	The trustee is the juristic person; staff changes should not repeatedly require substantive re-authorisation.
Clause 9 – disqualification	Administrative BO failure can ultimately lead to removal and disqualification across trusts, equating technical default with serious misconduct.	Limit cross-trust disqualification for administrative breaches to material or repeated default after notice, opportunity to remedy and fair process. Require correction and automatic expiry procedures for the public register.	Disqualification is a severe occupational/governance consequence and should be proportionate.
Clause 10 – Master-appointed trustees	The Master may override the deed and appoint co-/independent trustees without sufficiently detailed necessity, competence, conflict, duration, remuneration or review criteria.	Require objective necessity, written reasons, representations, nomination rights where appropriate, fit-and-proper/conflict checks, defined powers and duration, remuneration safeguards and court review. Clarify that clause 10(4)(a)–(c) are cumulative.	State intervention may be justified to protect separation of control and enjoyment, but the discretion should be bounded.
Clause 11 – foreign trustees	The territorial nexus is ambiguous and may cause duplicate regulation of foreign-law trusts or isolated South African transactions.	Apply the clause to material administration or disposal of trust property situated in South Africa; define isolated-transaction/simplified treatment and recognise equivalent foreign supervision where appropriate.	The wording should regulate the South African nexus without asserting unnecessary extraterritorial control.
Clause 12 – accounting / investigations	Investigation, standing and cost allocation can facilitate costly or vexatious disputes and lacks detailed procedural	Require sufficient interest, written terms of reference, independent/competent investigator, confidentiality, proportionality,	Investigatory power should protect trusts without becoming a private-dispute weapon.

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	safeguards.	opportunity to answer adverse findings and reasoned reviewable cost orders.	
Clause 13 – AML/CFT risk assessment	Risk-based exemption is discretionary and binary; proportionality for low-risk, inactive, charitable and stagnant-asset trusts is not assured.	Require publication of methodology, sector consultation and graduated simplified measures, not only full exemption. Review categories periodically.	Risk-based supervision is consistent with the Bill's AML/CFT purpose and avoids imposing high-cost controls where risk is demonstrably low.
Clause 14 – general powers	"Powers of an absolute owner" may be misconstrued as beneficial ownership or as overriding collective decision-making/deed restrictions.	Recast as a default enabling power subject to the deed, fiduciary duties, required consents and joint trustee decision-making.	Trustees control trust property fiduciary, not beneficially.
Clause 15 – professional standard	The enhanced standard for professional trustees is appropriate in principle but should not operate as strict liability or discourage reasonable reliance on specialists.	Clarify that liability remains fault-based and contextual; permit reasonable reliance on appropriately qualified advisers while retaining trustees' oversight duties.	Professional competence can justify a higher standard, but not insurer-like liability.
Clause 16 – investment	The detailed prudent-investor factors may be read rigidly against concentrated family-business/property holdings or deed-directed retention strategies.	State that factors are contextual, not mandatory outcomes; expressly recognise deed-authorised retention of founding/concentrated assets where trustees document the rationale and beneficiary interests.	Diversification is not appropriate for every trust and should not override lawful purpose and deed architecture.
Clause 17 – accountable institutions	The existing record obligation is ambiguous as to whether use as an agent and obtaining services are cumulative requirements, and the current terminology does not clearly cover single transactions and business relationships.	State the triggers disjunctively: use of an accountable institution as agent, obtaining services, entering a single transaction, or entering a business relationship. Use "or"; define or illustrate "agent" and "services"; align fields with FICA; permit secure reuse of verified data.	A clear statutory perimeter removes interpretive uncertainty and reduces duplicate capture without weakening AML/CFT supervision.
Clause 18 – trust account	A mandatory bank/mutual-bank account may be too rigid for offshore assets, regulated investment platforms, foreign currency or equivalent segregated arrangements.	Permit equivalent segregated accounts with regulated financial institutions, subject to clear identification as trust property.	The policy objective is segregation and traceability, not a single institutional form.
Clause 19 – trust property identification	Drafting should be corrected and aligned with modern electronic/investment assets.	Correct cross-references and recognise identification through electronic records, account designation and other objectively verifiable methods appropriate to the asset.	The duty should be capable of practical compliance across asset classes.
Clause 20 – annual financial statements	Universal AFS preparation, uncertain timing and unclear activity thresholds may be disproportionate for inactive, low-value and simple trusts. The phrase "aggregate inflows and outflows" also requires clarification.	Use multiple risk/value/activity criteria; permit simplified statements for objectively low-risk trusts; define activity by concepts such as the value and volume of receipts and payments; require statements by default within six months after year-end unless another lawful period applies; phase existing trusts and allow extensions.	This creates a clear preparation date, prevents premature Master requests and reduces simultaneous compliance pressure on trustees, accounting professionals and the Master.
Clause 21 – annual return	A new annual return duplicates information already held by the Master, SARS and BO systems and could create a concentrated	Make the return digital, pre-populated and interoperable; avoid duplicate BO/tax data; retain a common core with limited simplified/nil filing for	A staggered single-source/data-reuse model is more accurate and administratively sustainable and

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	recurring filing burden if all trusts share the same cycle.	inactive or objectively low-risk trusts; stagger due dates by registration anniversary or another equivalent prescribed cycle; consider nominal/no fee where filing serves regulatory data maintenance.	avoids a predictable national filing peak.
Clause 22 – records	Every trustee/former trustee retaining extensive records for five years creates duplication and privacy risk; predecessor records may be outside a successor's control.	Permit secure centralised electronic custody by the trust/current trustee/professional administrator; require documented handover; limit liability to records in possession/control or reasonably obtainable.	The law should ensure preservation and accessibility, not duplicate personal archives.
Clause 23 – BO updates	The 10-day deadline runs from occurrence of the change, even if trustees learn later; repositories duplicate other systems.	Use at least 20 business days from when trustees became aware or reasonably ought to have become aware of a material change; add reasonable-steps/correction safe harbour and data reuse across public systems.	This was one of the most consistently raised operational concerns and is especially unrealistic for lay/family trustees.
Clauses 23(3), 31, 32(1)(h) – privacy	BO information can include identity numbers, addresses and data on minors/vulnerable beneficiaries while access categories are deferred to regulation.	Confine access in primary legislation to defined lawful functions; require purpose limitation, authentication, access logging, correction, security and onward-disclosure controls; restrict sensitive fields.	The regime engages constitutional privacy and POPIA and should apply data minimisation.
Clause 24 – remuneration / mediation	Mandatory mediation may delay legitimate recovery or court access; accreditation is undefined and the trust always bears the cost.	Define recognised accreditation; allow waiver where unavailable/inappropriate; suspend prescription; permit cost allocation according to conduct; preserve direct court access where justice requires.	ADR is useful but should not become a disproportionate section 34 barrier.
Clause 25 – resignation	Resignation only becomes effective on receipt of Master acknowledgement, potentially keeping a person involuntarily in fiduciary office.	Make resignation effective on valid notice plus proper lodgement/proof of delivery, subject to minimum-trustee and handover safeguards; alternatively deem acknowledgement after 10 business days.	Administrative inaction should record, not control indefinitely, the end of fiduciary office.
Clause 26 – removal	"Fails to perform satisfactorily" and failure to comply with any lawful request are broad and subjective, especially when linked to disqualification.	Require material failure, written notice, opportunity to remedy/represent, reasons and proportionality, save for urgent protective action.	Removal should distinguish incapacity or serious misconduct from remediable administration.
Clause 27 – court variation	The provision should expressly preserve founder intention and consider broader consequences.	Require consideration of ascertainable founder intention, beneficiary interests, creditors, tax/regulatory consequences and less intrusive alternatives; preserve lawful deed-based/consensual amendment mechanisms.	Judicial variation should remain exceptional and principled.
Clause 28 – termination	The trust terminates only when removed from the register, so administrative delay can keep a fully administered trust legally alive.	Provide that substantive termination occurs under the deed/applicable law when requirements are met; deregistration records that event. Require written confirmation within a prescribed period/deemed deregistration.	This affects tax, banking, trustee liability and closure and is another major administrative-dependency risk.
Clause 30 – irregularities	The relationship between "material irregularity" here and the Auditing Profession Act is unclear; compilers/reviewers may be confused with auditors.	Apply the statutory reporting duty expressly to registered auditors conducting audits; align terminology with the Auditing Profession Act and separately state any intended duties of compilers/reviewers.	Clear professional boundaries avoid unintended reporting and liability.
Clause 31 – PAIA / POPIA	Generic references do not identify responsible party, correction route, security standard or breach governance for sensitive trust data.	Specify Chief Master/Master information-governance responsibilities, security controls, auditable access, correction procedures and breach response.	High-volume centralised trust/BO data requires explicit governance.
Clause 32 – regulations / directives	Core burdens and sanctions are deferred to regulations; directives/guidelines may in practice become quasi-binding.	Publish draft regulations, thresholds and maximum fines before finalisation/commencement; require consultation on material regulations; state that directives/guidelines cannot create substantive duties, offences, fees or sanctions beyond the Act/regulations.	Stakeholders cannot assess proportionality if essential obligations remain unknown.

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Clauses 33–34 – compliance / fines	The Master investigates/enforces and imposes fines; appeal is internal to the Director-General and described as final; official-system failure is not expressly protected.	Require pre-fine representations; suspend enforcement on appeal; require an independent appellate official; recognise reasonable excuse/system failure; publish maxima; expressly preserve judicial review/access to court.	Personal fines can become civil judgments. Strong procedural fairness and section 33/34 safeguards are essential.
Clause 35 – offences	Routine administrative failures can attract up to five years' imprisonment and some R10m fines; most offences lack express fault/materiality requirements.	Criminalise only intentional or reckless material contraventions (or intentional failure to obey a final compliance order). Add reasonable-steps, third-party-information and official-system-failure defences; avoid duplicate punishment for the same conduct.	Technical, interpretive or system-related defaults should primarily be remediated administratively. The present regime risks deterring family and professional trustees.
Clause 36 – Magistrates' Court jurisdiction	The provision permits severe penalties but does not cure concerns about proportionality and fault in clause 35.	Retain jurisdiction only subject to the revised offence/fault framework and ordinary constitutional criminal-procedure safeguards.	Forum jurisdiction should not expand substantive criminal liability.
Clauses 37–39 – repeal / transition	The savings provisions do not adequately cover pending matters, historic records, staggered recurring duties, operational readiness or existing trust arrangements.	Provide phased commencement; at least 12 months for core remediation and 12–24 months where major recurring systems are required; preserve historic acts/authorities and pending applications; commence duties only after regulations/forms/systems are functional.	A commencement surge could create widespread technical default and overwhelm the Master.
Repeal – former TPCA s2	The current mechanism dealing with an oral trust reduced to writing appears to disappear without explanation.	Confirm whether omission is intentional and include a savings/recognition provision for existing trusts relying on the former section.	Repeal should not create uncertainty about historically valid arrangements.
Review rights – former TPCA s23	The Bill materially expands discretionary and enforcement powers and describes an internal appeal decision as final. PAJA already provides the general statutory framework for review, but the Bill should not create uncertainty about non-ouster.	Include a concise savings provision confirming that internal remedies and decisions remain subject to judicial review under PAJA, the Constitution and applicable law; clarify that "final" means final only within the internal administrative process.	This preserves existing review rights without unnecessarily duplicating PAJA or implying a narrower bespoke statutory review code.

E. Constitutional safeguards

FISA should frame the constitutional concern as one of legality, rationality, proportionality and procedural fairness rather than asserting an absolute constitutional freedom of contract. Relevant constitutional provisions include sections 1(c), 2, 10, 14, 22, 25, 33, 34, 36 and 39(2).
The strongest constitutional axis is the combination of expanded administrative control with the need for clear procedural safeguards and non-ouster of judicial review. Clauses 6, 25 and 28 make private-law consequences depend on administrative acts; clauses 23 and 31 engage privacy; and clauses 33–35 impose personal and criminal sanctions. PAJA already provides the general statutory review framework, which the Bill should not obscure or restrict.
Where the same legitimate purpose can be achieved through notification, lodgement, deemed acknowledgement, risk-based supervision, reasonable remediation periods or less restrictive compliance mechanisms, those measures should be preferred.

F. Master's Office capacity and implementation

The Bill should be assessed cumulatively. It requires the Master's Offices to absorb recurring annual returns and BO updates while also processing amendments, trustee authorisations, security, investigations, resignations, terminations, access requests, compliance notices, fines and appeals-related administration.
Administrative delay under the Bill is not merely a service-delivery inconvenience: it can prevent exercise of amended powers, prolong trusteeship and delay

legal termination. The statute should therefore contain service standards, immediate electronic receipts, deemed outcomes, system-failure safe harbours, escalation procedures and phased commencement.
FISA recommends an implementation and capacity impact assessment before commencement covering expected transaction volumes, staffing, ICT capacity, cybersecurity, business continuity, funding, service standards and the impact on the Master's other statutory functions.

G. Interaction with the Legal Practice Amendment Bill, 2026

FISA should separately flag the overlap between multidisciplinary fiduciary practice and proposed section 33 of the Legal Practice Act. The reservation of wills/testamentary drafting and the proposed prohibition on non-practitioners advertising work "in connection with" deceased-estate administration may be wider than the underlying reserved legal work.
The Department should clarify that lawful trust administration, trustee services, estate-administration support, accounting, tax, BO compliance and fiduciary governance are not converted into reserved legal work merely because they form part of a broader fiduciary mandate. It should also expressly clarify whether drafting/amending trust instruments is intended to remain outside the reserved-work list.
Where a legal practitioner acts as trustee, the boundary between trustee remuneration and separate professional legal fees should be clear, and parallel LPC/Master enforcement should be coordinated and proportionate.

H. Recommended priority for the final FISA submission

Priority 1: clauses 6, 23, 25, 28, 33–35; clear preservation of PAJA/constitutional judicial review; Master's Office capacity/service standards; and transitional operational readiness.
Priority 2: clauses 1, 8–10, 13, 20–22, 26 and 32; proportionality for low-risk/inactive/family/charitable trusts; privacy and professional-trustee implications.
Priority 3: technical drafting and coherence issues in clauses 3–5, 11–12, 14–19, 24, 27, 30–31, 36–39 and repeal-related savings.

I. Proposed closing submission

FISA respectfully submits that the Bill presents an important opportunity to modernise South African trust regulation. The objectives of transparency, beneficiary protection, accountable trusteeship and effective AML/CFT supervision are supported. Those objectives will, however, be best served by legislation that is clear, proportionate, administratively executable and capable of compliance in practice. FISA therefore requests that the Department reconsider the provisions identified above, publish the material draft regulations for consultation, engage with fiduciary-sector stakeholders on implementation design, and phase commencement so that trustees and the Master's Offices are able to comply from the outset without avoidable legal uncertainty or systemic administrative failure.